means in all probability that he will be denied admission for many years to come. If misconduct committed nearly ten years ago is today a good disqualification, then logically an ineradicable weakness of character should remain valid two years hence, or even ten. But was the lapse evidence of an incurable defect? The petitioner had undergone punishment in Thailand. In Malaya he had further suffered dismissal. All in all, it was an unforgettable lesson. The question is whether he had expiated in full for his lapse from rectitude, or do I take it on myself to mete out further retribution. Would it be right to blight any man's future prospects for ever? It is said that he can seek other employment. I believe prospective employers do generally require references. Mr. Augustin would naturally have to include his certificate of call to the English Bar. Inevitably would follow the disclosure that the court had considered his character to be such that it renders him unfit for admission to practice. Would any employer be more indulgent?

Mr. Ramachandran has drawn my attention to Article 48(1) of the Federal Constitution disqualifying from membership of either House of Parliament any person who "has been convicted of an offence by a court of law in the Federation and sentenced to imprisonment for a term of not less than one year or to a fine of not less than two thousand dollars and has not received a free pardon". The same Article, however, goes on to provide that such disqualification, if not removed by the Yang Dipertuan Agong, shall cease at the end of five years from the date of release from custody or imposition of the fine. Thus five years suffice to erase the past of any person running for a seat in Parliament. I do not say that the same period of five years should also apply to qualified persons petitioning for admission to the Bar. The circumstances of each case must be considered. Nevertheless, the principle that a disqualification does not hold good for all time is one which I consider just and proper. *In re Weare*[1] contains a passage in the judgment of Lord Esher M.R. which seems to me particularly apposite: —

"I know how terrible that is (striking a solicitor off the roll). It may prevent him from acting as a solicitor for the rest of his life; but it does not necessarily do so. He is struck off the roll; but if he continues a career of honourable life for so long a time as to convince the court that there has been a complete repentance, and a determination to persevere in honourable conduct, the court will have the right and the power to restore him to the profession."

The same considerations apply, in my opinion, to striking off the roll and refusing admission. It is entirely a question of character and fitness. On the file in support of Mr. Augustin's petition are certificates of his good character given by practitioners of several years' standing. His offence and conviction in the Thai Military Court had been reported on December 4, 1963 by the Attorney-General to the Inn of which he was admitted as a student in January 1961 — while still in the police force. The Treasurer was content, in view of the sentence served, to issue a warning that any future misconduct might lead to his being struck off the roll of students. The blot on his record did not obstruct his call to the Bar on November 26, 1969.

I am sure the Inns of Court are every bit as jealous of the honour of those admitted to the English Bar as are advocates and solicitors in Malaysia regarding the reputation of the legal fraternity. The objectors have freely conceded that nothing has been known to the discredit of Mr. Augustin since January 1964. For my own part I think that he has learnt a bitter lesson and there remains nothing more that he has to atone for. Should I dismiss this petition I would in effect be saying that he suffers from an incurable and ineradicable defect of character. I do not think one can safely be prophetic about the future conduct of anybody except drug addicts and habitual criminals. Nor do I think, quoting from Lord Lindley's judgment at page 477 in *Weare's* case, that "it would be a stretch of charity which would degenerate into absurd and ridiculous weakness" to consider the unhappy episode a closed chapter in Mr. Augustin's past. He must know that the future consequences of any misconduct will be visited with the severest sanctions. Where, in 1964 we had readmitted an advocate and solicitor struck off the rolls six years earlier, our trust and confidence has not been misplaced. I do not think Mr. Augustin will lightly abuse my trust. I shall accordingly allow this petition.

Petition allowed.

UNITED TEMIANG (F.M.S.) RUBBER ESTATES LTD. v. PERUMAL

[F.C. (Ong C.J., Gill and Ong Hock Sim F.JJ.) August 7, 1972]

[Kuala Lumpur — Federal Civil Court Appeal No. 35 of 1972]

Employment — Dismissal of labourer — Breaking of contract of service with employer — Absence from work for more than two days — Claim by employer for possession of house occupied by labourer free of rent — Employment Ordinance, 1955, s. 15(2).

The respondent and his wife had been employed as rubber tappers and the respondent had been allowed occupation of a house rent free. Subsequently, he and his wife were dismissed. Later the respondent's wife, who was in the family way, was re-employed on compassionate grounds. She ceased work upon her confinement and thereafter never reported for duty. The appellants claimed possession of the house. The trial judge dismissed the application as he held that the respondent's wife was a tenant of the house in her own right as an employee of the appellants and should have been joined as co-defendant. The appellants appealed.

Held: (1) as the respondent's wife had not reported for duty after she ceased work upon her confinement, she must be deemed to have broken her contract of employment with the appellants;

(2) neither the respondent nor his wife could claim to be still in the employment of the appellants and therefore the appellants were entitled to possession of the house.

FEDERAL COURT.

Leow Shin Fong for the appellants.

Karam Singh for the respondents.

Ong C.J.: The appellants on February 5, 1972 issued a writ against the respondent claiming possession of a house belonging to them which continues to be

occupied until the present day by the respondent, his wife and children. The respondent Perumal was a rubber tapper who, during his employment by the appellants, was allowed occupation of the house in question rent free. On May 22, 1970 he was dismissed. His wife, Thanapakiam, also a rubber tapper was dismissed on the same date — a practice followed by the appellants in accordance with the provisions of section 17 of the Employment Ordinance No. 38 of 1955. The appellants' estate manager, Mr. Kurup, stated in his affidavit of March 7, 1972 that Thanapakiam, being then in the family way, was re-employed on compassionate grounds. She ceased work upon her confinement on December 18, 1970 and it was a fact alleged expressly by the appellants and not controverted either by her or her husband that since December 18, 1970 she had never reported for duty. On February 7, 1971 she was duly paid her maternity allowance.

On February 21, 1972 the appellants moved the High Court at Seremban for an order that Perumal and all persons holding through or under him may be restrained until the trial of the action from remaining in the appellants' house. Both husband and wife filed affidavits to the effect that the wife had never been dismissed and that consequently she was and is entitled as of right to remain in occupation of the premises. The learned judge in dismissing the application said: —

"Since Thanapakiam is a tenant of the house in her own right as an employee of the Estate, I am of the view that she should have been joined as a co-defendant in this action, and in order that the application can be properly considered on its merits, as the second respondent in the motion before this court. The application is therefore premature, to say the least."

In coming to that conclusion I am afraid that certain facts had been overlooked altogether. First, there was an inquiry held under section 16A of the Industrial Relations Act 1967 into the complaint by both Perumal and Thanapakiam of wrongful dismissal. The complaint was dismissed by the Minister: see letter dated August 2, 1971, annexed to the affidavit of Mr. Kurup, sworn on March 3, 1972. Secondly, Mr. Kurup's affidavit of March 10, 1972 contains a specific statement of fact that Thanapakiam never applied for re-engagement or reported for duty after she ceased work on December 18, 1970. This was not challenged or contradicted. Under the circumstances the law is clear. Section 15(2) of the Employment Ordinance 1955 provides: —

"(2) A labourer shall be deemed to have broken his contract of service with the employer if he has been continuously absent from work for more than two days —

(a) without prior leave from his employer or without reasonable excuse; or

(b) without informing or attempting to inform his employer of the excuse for such absence."

I do not think it can be seriously argued that neither the respondent nor his wife has any shadow of a right to claim that they are still in the employment of the appellants. It is moreover, a fact deposed to in the affidavit of Mr. Kurup dated March 7, 1972, that the respondent has now been gainfully employed by Seng Lee Plywood Sdn. Bhd. at their factory situate on the 5th mile, Tampin-Seremban Road. He cannot be employed concurrently by this factory and by the appellants. I do not see why his wife should be made a party merely for the purpose of an inquiry into a fact which she certainly cannot challenge.

I would accordingly allow this appeal with costs, and make the order on the appellants' motion as prayed.

Gill and **Ong Hock Sim F.JJ.** concurred.

Appeal allowed.

Solicitors: *Shearn Delamore & Co.; Karam Singh Veriah & Co.*

AMMAN SINGH v. VASUDEVAN

[O.C.J. (Mohammed Azmi J.) November 30, 1972]

[Kuala Lumpur — Civil Suit No. 1567 of 1969]

Contract — Object of contract to defraud creditors — Winding up of company — Money paid — Whether consideration lawful — Whether contract enforceable — Contracts (Malay States) Ordinance, 1950, ss. 24, 77, and 78.

Moneylenders — Whether contract for advance of money was a moneylending transaction — Whether plaintiff moneylender — Statutory presumption — Whether rebutted — Moneylenders Ordinance, 1951, s. 3.

In this case the plaintiff had advanced the sum of $10,000 to a company of which the defendant was the managing director in consideration of which the defendant agreed to pay him twenty cents on every ton of timber and other produce extracted from certain forest lands, of which the company were sublicensees. Subsequently, a petition was presented for the winding-up of the company. Thereupon an agreement was entered into whereby in consideration of the plaintiff's undertaking not to support the creditors' petition for winding-up, the defendant undertook to pay the plaintiff the sum of $10,000 which had been loaned to the company.

When the petition came up for hearing, counsel who appeared for the plaintiff opposed the petition. The defendant then gave the plaintiff a cheque for $5,000 as part payment of the sum of $10,000. This was dishonoured and the plaintiff then sued the defendant for breach of contract. The defendant alleged *inter alia* (a) that the original agreement between the company and the plaintiff was a moneylending transaction and as the plaintiff had not complied with the provisions of the Moneylenders Ordinance, the agreement was unenforceable; (b) that the agreement between the plaintiff and the defendant was illegal and immoral on the ground of interfering with the course of justice. It was also argued on behalf of the plaintiff that the agreement by the defendant was a contract of indemnity.

Held: (1) the legality or otherwise of the agreement between the plaintiff and the company was not the main issue in this case and in any event on the facts, the statutory presumption that the plaintiff was a moneylender had been rebutted;

(2) as the agreement between the plaintiff and the defendant in this case was an attempt to defraud the other creditors in the winding-up petition, it was void, as the consideration for it was unlawful. The agreement was therefore unenforceable at the instance of the plaintiff;

(3) the contract between the plaintiff and the defendant was not a contract of indemnity but, even if it was, there was no evidence to show that the company had refused to make repayment upon proper notice of demand, and therefore there was nothing for the defendant to indemnify the plaintiff.

Case referred to:-

(1) *Elliott* v. *Richardson and others* (1870) L.R. 5 C.P. 744.